

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID PATRICK SILVA and CINDI
L. JONES,

Plaintiffs,

v.

COUNTY OF TEHAMA, et al.

Defendants.

CIV-S-03-1853 DFL/CMK

MEMORANDUM OF OPINION
AND ORDER

Plaintiffs bring federal and state law claims against defendants based on a November 2002 search of plaintiffs' residence. Defendants City of Corning ("Corning"), County of Glenn ("Glenn"), and County of Tehama ("Tehama") each move for summary judgment as to plaintiffs' claims against them. For the reasons stated below, defendants' motions are GRANTED.

I.

On the morning of November 8, 2002, law enforcement officers from the defendant counties and city executed a search warrant at

1 plaintiff Silva's residence.¹ (Compl. ¶ 14.) Plaintiffs allege
2 that the officers used excessive force by breaking down the door
3 to the residence and beating plaintiff Silva. (Id.) Plaintiffs
4 also allege that the officers physically assaulted plaintiff
5 Jones and forced her to undergo an unlawful strip search. (Id.
6 ¶¶ 15, 54.) As to the moving defendants, plaintiffs allege that
7 Corning, Glenn, and Tehama have a policy or practice of
8 permitting the use of excessive force in searches. (Id. ¶¶ 22-
9 24.) In addition, plaintiffs allege that the moving defendants
10 failed to train their officers on how to conduct legal searches.
11 (Id. ¶¶ 35-38.)

12 In September 2003, plaintiffs filed a complaint making
13 federal claims against the moving defendants, alleging municipal
14 liability under Monell v. New York City Dept. of Social Servs.,
15 436 U.S. 658 (1978). The complaint also makes various federal
16 and state law claims against the individual police officers,
17 named as "does" in the complaint.

18 II.

19 _____In their motions for summary judgment, defendants content
20 that the discovery taken over the past year-and-a-half, does not
21 support a Monell claim. Defendant Corning specifically states
22 that plaintiffs, in response to written discovery requests and in
23 their deposition testimony, failed to point to a single fact
24 _____

25 ¹ The officers were working together as a task force called
26 TAGMET (Tehama and Glenn Methamphetamine Enforcement Team), which
was directed by the State of California Department of Justice.
(Compl. ¶ 14; Parker Decl. ¶ 2.)

1 showing that the alleged use of excessive force and unlawful
2 strip search were caused by "a municipal policy or custom,
3 deliberate or otherwise." (Corning Mot. at 5.) Similarly,
4 Tehama states that "plaintiffs have failed to produce any
5 admissible evidence which would be sufficient" to show Monell
6 liability. (Tehama Mot. at 7.)

7 In response, plaintiffs do not come forward with evidence
8 supporting their Monell claims. See Celotex Corp. v. Catrett,
9 477 U.S. 317, 325, 106 S.Ct. 2548 (1986) (holding that moving
10 party discharges its burden of production "by 'showing' -- that
11 is, pointing out to the district court -- that there is an
12 absence of evidence to support the nonmoving party's case").
13 Therefore, plaintiffs have not carried their burden, and
14 defendants' motions for summary judgment are GRANTED.

15 As to the remaining claims, plaintiffs request the
16 opportunity to amend their pleadings to name the individual
17 defendants that are listed as "does." (Opp'n at 3.) When a
18 request to amend the complaint is made after the scheduling order
19 is issued, plaintiffs must show good cause for the amendment
20 under Fed.R.Civ.P. 16. Coleman v. Quaker Oats Co., 232 F.3d
21 1271, 1294-95 (9th Cir. 2000); Johnson v. Mammoth Recreations,
22 Inc., 975 F.2d 604, 607-08 (9th Cir. 1992). The Rule 16(b)
23 standard focuses on the diligence of the party seeking the
24 amendment rather than prejudice to the other party, as under
25 Fed.R.Civ.P. 15. Johnson, 975 F.2d at 609.

26 In this case, plaintiffs conceded at oral argument that they

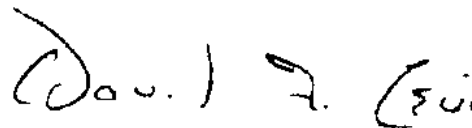
1 knew the identity of the "doe" defendants by December 2003.
2 Therefore, plaintiffs have not been diligent. They had over a
3 year-and-a half to amend their complaint to properly name the
4 individuals officers, but failed to do so. Moreover, they
5 provide no rationale for this oversight. Therefore, plaintiffs'
6 motion to amend the complaint is DENIED.

7 III.

8 For the reasons discussed above, defendants' motions for
9 summary judgment are GRANTED. Plaintiffs' motion to amend the
10 complaint is DENIED. Finally, the remaining federal and state
11 law claims against the "doe" defendants are dismissed. The clerk
12 shall enter judgment.

13 IT IS SO ORDERED.

14 Dated: 10/20/2005

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DAVID F. LEVI
19 United States District Judge
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